CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

GLORIA SCOTT AND	*	
DEANIA JACKSON	*	
	*	NO. 96-8461
VERSUS	*	DIVISION "I"
	*	SECTION 14
THE AMERICAN TOBACCO	*	
COMPANY, INC., ET AL.	*	
	*	

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Transcript of proceedings before The Honorable Richard J. Ganucheau, Judge Pro Tempore, Civil District Court, Parish of Orleans, State of Louisiana, 421 Loyola Avenue, New Orleans, Louisiana 70112, commencing on June 18, 2001.

* * * * *
Wednesday Afternoon Session
April 23, 2003
1:34 p.m.
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APPEARANCES:

GAUTHIER, DOWNING, LaBARRE, BEISER
AND DEAN
Attorneys at Law
(By: Deborah M. Sulzer, Esquire)
3500 North Hullen Street
Metairie, Louisiana 70002
- AND -
HERMAN, HERMAN, KATZ AND COTLAR, L.L.P.
Attorneys at Law
(By: Russ M. Herman, Esquire)
820 O'Keefe Avenue
New Orleans, Louisiana 70113
- AND -
BRUNO AND BRUNO
Attorneys at Law
(By: Joseph M. Bruno, Esquire)
855 Baronne Street
New Orleans, Louisiana 70113
- AND -
LEGER AND MESTAYER
Attorneys at Law
(By: Walter J. Leger, Jr., Esquire)
9th Floor
600 Carondelet Street
New Orleans, Louisiana 70130

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- AND -

GERTLER, GERTLER, VINCENT AND PLOTKIN, L.L.P.
Attorneys at Law
(By: Michael H. Gertler, Esquire)
127-129 Carondelet Street
New Orleans, Louisiana 70130

- AND -

MURRAY LAW FIRM, APLC
Attorneys at Law
(By: Stephen B. Murray, Esquire)
Suite 2550
909 Poydras Street
New Orleans, Louisiana 70112

- AND -

BENCOMO AND ASSOCIATES
Attorneys at Law
(By: Raul R. Bencomo, Esquire)
Suite 2110, One Poydras Plaza
639 Loyola Avenue
New Orleans, Louisiana 70113

- AND -

W. JAMES SINGLETON, ESQUIRE
Attorney at Law
4050 Linwood Avenue
Shreveport, Louisiana 71108-2432
(Attorneys for the Plaintiffs)

JONES DAY
Attorneys at Law
(By: Mark A. Belasic, Esquire)
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190

- AND -

STONE PIGMAN WALTHER WITTMANN, L.L.C.
Attorneys at Law
(By: Phillip A. Wittmann, Esquire)
546 Carondelet Street
New Orleans, Louisiana 70130
(Attorneys for the Defendant,
R. J. Reynolds Tobacco Company)

KING AND SPALDING
Attorneys at Law
(By: Richard A. Schneider, Esquire
Jack M. Williams, Esquire)
191 Peachtree Street
Atlanta, Georgia 30303-1763
(Attorneys for the Defendant,
Brown and Williamson Tobacco
Corporation, individually and

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as successor by merger to
The American Tobacco Company)

ADAMS AND REESE, L.L.P.
Attorneys at Law
(By: Charles F. Gay, Jr., Esquire
Ronald J. Sholes, Esquire)
Suite 4500, One Shell Square
701 Poydras Street
New Orleans, Louisiana 70139
(Attorneys for the Defendant,
Philip Morris, Incorporated)

SHOOK, HARDY AND BACON, L.L.P.
Attorneys at Law
(By: Gary R. Long, Esquire
Tammy B. Coker, Esquire)
One Kansas City Place
1200 Main Street
Kansas City, Missouri 64105-2118
(Attorneys for the Defendant,
Lorillard Tobacco Company)

SPECIAL MASTER:
Dominic J. Gianna, Esquire
Middleberg, Riddle and Gianna
Suite 3100
201 St. Charles Avenue
New Orleans, Louisiana 70170-3100

REPORTED BY:
CHERYL FOURNET HUFFMAN, RMR, CRR
Registered Merit Reporter
Certified Realtime Reporter
(No. 75009)
Huffman & Robinson, Inc.
One Shell Square, Suite 250 Annex
New Orleans, Louisiana 70139
(504) 525-1753 (800) 749-1753

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I N D E X

WITNESS: PAGE

ROBERT J. NORRELL, Ph.D.

DIRECT EXAMINATION
BY MR. SHOLES.....18827

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P R O C E E D I N G S

THE BAILIFF:
All rise for the jury, please.
(Whereupon the jury joins the proceedings at this time.)
THE LAW CLERK:
All rise. Recess is over. Court will come to order.
THE COURT:
Please be seated.
Mr. Sholes.
MR. SHOLES:
Thank you.
Good afternoon, everyone.
THE JURY:
Good afternoon.

DIRECT EXAMINATION

BY MR. SHOLES:

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Q. Dr. Norrell, I want to go back just to make sure that we are clear on something. We showed two film clips before we left.

Now, were those the entire films?

A. No, one of them was edited just to keep it from being so long. But we put the central messages in there, the main messages in there. But we had to, to shorten it a little bit, we cut out a few things.

Q. Well, the parts that we didn't show, what was in it?

A. The same sort of material. Just more of it.

Q. And let's telegraph to the jury, we may show some more clips later on today; is that right?

A. That's right.

Q. Are we going to be able to show all of everything that's on those clips?

A. No. Again, the films and television programs that we're going to show are only portions of them because they would take far too long to show in their entirety.

Q. Now, the ones that we showed earlier, were there any tobacco industry statements that you took out?

A. No.

Q. Okay. Let's move on to another topic.

A. All right.

Q. Are there other names or words that are used for cigarettes?

A. Yes. There have long been a lot of slang terms used for cigarettes.

Q. Well, how far back do you recall people have been using other names for cigarettes?

A. Well, almost since the widespread use of cigarettes. Certainly, since the late 1800s.

Q. Now, do you have a demonstrative that talks about that?

A. I do.

MR. SHOLES:
Can we prepublish DDA-1001?
MR. MURRAY:
No objection.
THE COURT:
You may publish.

EXAMINATION BY MR. SHOLES:

Q. Now, Doctor, tell us what we're looking at.

A. This is a clip out of the newspaper from 1886 that uses the term in the headline "coffin nails." And "coffin nails" was one of the first slang terms used to mean cigarettes. It has been used ever since. It was used extremely widely for most of the 20th Century -- for most of the 1900s and all the way back to 1886 at least.

Q. How do slang terms impact the public's awareness?

A. Well, slang terms, when they -- when the term itself suggests a message or a meaning, "coffin

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nail" means a nail in one's coffin, to mean a cigarette, that tells the user of the term and the hearer of the term that it -- that a cigarette has a deadly effect, it can put you in a coffin.

And every time that term is used, whether people think about it consciously or not, the user and the hearer or hearers are reminded that cigarettes can kill you.

Q. And were there other terms that were used to describe or as slang for cigarettes?

A. Yes.

Q. Now, Doctor, is there a book that talks about slang terms?

A. Yes, there's a Dictionary of American Slang. And, of course, it has many, many terms that have nothing to do with what I'm here to testify about. But it includes a number of slang terms that do mean cigarette.

Q. Did you pull out a couple examples of those for us?

A. Yes.

Q. And how they might have been used?

A. I did.

MR. SHOLES:
Your Honor, may we prescreen DDA-1046?

MR. MURRAY:
No objection.

MR. SHOLES:
Move to publish.

THE COURT:
You may publish it.

EXAMINATION BY MR. SHOLES:

Q. Guide us through this one, Doctor.

A. Well, these are just some excerpts from the Random House Historical Dictionary of Slang. Of course, on the bottom there, it talks about "coffin nails." And it has a reference there that goes back to 1867, as a matter of fact. But it gives some examples of how it has -- it has been used, how that term has been used all the way down to 1965.

The one above that is "cancer stick." And, of course, this is very common, was and still is used. It was used first, we think, in the 1950s. And, of course, that coincides with the connection of smoking to lung cancer. And those are just two of the slang terms.

There are a number of other ones, "nicotine fiend," "nicotine fit." There's lots of slang associated with the use of cigarettes.

Q. Well, Doctor, you mentioned the term "nicotine fit." How long has that kind of term been commonly used?

A. Well, I think that goes back earlier because,

of course, people have connected nicotine and the addictive quality of nicotine in tobacco even before we had the connection to cancer. So nicotine and the habit-forming implication of "nicotine fiend" or

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"nicotine fit" is much older but still used.
Q. Well, what does the term mean, "nicotine fit"?
A. "Nicotine fit," that you are so in need of having a cigarette, smoking a cigarette, that if you don't have one, you're about to experience an emotional breakdown. And that's the implication of that. People don't really have an emotional breakdown, usually, but they want a cigarette.
Q. And that term has been used since way back when?
A. Yes, sir.
MR. SHOLES:
Let's take that exhibit down.
EXAMINATION BY MR. SHOLES:
Q. Professor Norrell, were the risks of smoking and the habit-forming aspects of smoking portrayed in movies that appeared in the first half of the century?
A. Yes. Movies reflect real life in one form or another. And movies reflected people smoking. Movies also picked up the message of the health risks connected to smoking. And, one, if you look at a lot of movies that were made in the late '30s or 1940s, you see a lot of references to smoking and health and a lot of references -- and a lot of times they do this by using some of these slang terms.
Q. Well, did you bring a few examples of that

for us?
A. Yes, I have a few examples.
Again, these are excerpts from movies. They are just a few of a great many movies that had similar sorts of references in them.
MR. SHOLES:
Your Honor, with The Court's permission, we'd like to show some of those examples. We'd like to at this time prescreen DDA-1073.
MR. MURRAY:
No objection.
MR. SHOLES:
Ms. Mouton, could you please?
THE COURT:
Would someone open the corridor door, please?
MR. SHOLES:
Proceed, please.
One moment. Could we move to publish?
THE COURT:
You may publish it.
(Whereupon the above-referenced videotape is played back at this time as follows:)
A Letter to Three Wives, 1949:
SPEAKER 1: The purpose of radio writing, as far as I can see, is to prove to the masses that a deodorant can bring happiness, a mouthwash guarantee success, and a laxative attract romance.
SPEAKER 2: Well, --
SPEAKER 3: Take it easy, George.

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SPEAKER 4: Let him alone. He'll run longer than Linda Gray.

SPEAKER 1: Don't think, said the radio. I'm going to pay you for it. Can't spell cat? Too bad. But a yacht and a million dollars to the gentleman for being in our audience tonight.

Worry, said the radio. Will your best friends not pay? Will you lose your teeth? Will your cigarettes give you cancer? Will your body function after you're 35? If you don't use our product, you lose your husband, your job and die. Use our product and we'll make you rich, we'll make you famous.

* * * * *

SPEAKER 1: The changes in those balloons threw me. Just think, a bunch of guys sweating all day in a sub down in the Tokyo bay, guys just like us, sneaking up at night to radio balloon positions. Just let me hear anybody talk about the Navy again. Boy, they're -- they're good.

SPEAKER 2: Funny. They're not bad at poker, either.

SPEAKER 1: Oh, you're not kidding.

I kind of figured on getting Ellen a present in Chungking, you know, a kimono or something. But these Navy guys have cleaned me. Believe it, I've only got 14 bucks.

SPEAKER 1: Well, I've got eight or ten dollars I could let you have.

SPEAKER 2: Oh, no, no. I've been thinking. Cigarettes sell for 60 cents a carton on the boat here. But in Chungking, I heard the boys will pay seven bucks.

SPEAKER 1: Yeah?

SPEAKER 2: So I figure I may load THE DUCK with coffin nails.

SPEAKER 1: Hey, that's an idea.

* * * * *

Mr. Peabody and the Mermaid, 1948:

SPEAKER 1: Will you join me, sir? I say, will you join me in a drink, sir?

SPEAKER 2: Are you an American?

SPEAKER 1: Why, yes.

SPEAKER 2: Then listen. About a week ago, I had a very severe headache. So my girlfriend makes me go to this doctor, so all right. Well, the first thing he does, he takes my blood pressure. It's too low. Then he plugs me in on a basal metabolism, it's too high. Then he checks my heart, it's too

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weak. When he X-rays me, I'm out of focus. When I'm fluoroscoped, the liver has disappeared. So what do you think he says?

SPEAKER 1: What?

SPEAKER 2: Give up cigarettes. I'll have a beer.

THE BARTENDER: Yes, sir.

SPEAKER 1: Well, what did he say was the matter with you?

SPEAKER 2: He don't know. He's baffled. All he knows is give up cigarettes.

SPEAKER 1: For how long?

SPEAKER 2: Just till I go crazy.

* * * * *

Saboteur, 1942:

SPEAKER 1: Hey, buddy, hold the wheel awhile; will you? While I animate this thing. I'm a nicotine addict.

* * * * *

No Smoking, 1951:

BACKGROUND MODERATOR: Through the smoke of centuries, when Columbus first set foot on the new world....

CARTOON CHARACTER 1: Ow.

CARTOON CHARACTER 2: How.

CARTOON CHARACTER 1: Chew?

CARTOON CHARACTER 2: Smoke.

CARTOON CHARACTER 1: Match?

CARTOON CHARACTER 2: Match.

BACKGROUND MODERATOR: In fact, smoking became a new habit in the old world. It got so man could face any test with a cigarette in his mouth. Ready? Aim. Fire.

The average man's habit of smoking leaves its marks deeply imprinted upon his surroundings. With tobacco, the

smoker finds relaxation and contentment. A constant companion in his leisure hours. That last puff before retiring. And that first drag on arising. The soothing fag to face the day's toils.

But sometimes because of the irritated eyes, tickling throat, dry hack, coughing, wheezing and the shortness of wind, the inveterate smoker gets a strange desire to rid himself of the habit.

CARTOON CHARACTER 1: Well, I quit. There. I feel better already.

CARTOON CHARACTER 3: Well, George, you've gone and done it. I sure admire a guy that can quit smoking like you can. It ain't easy. If it was, I'd quit.

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BACKGROUND MODERATOR: Winning, giving up the habit, changed his entire outlook.

CARTOON CHARACTER 1: What did I quit smoking for? I like smoking. I'm no quitter. I get a lot of pleasure smoking. I love smoking. It's my hobby. Smoke, smoke, smoke, smoke, smoke.

CARNIVAL OPERATOR: And the little man wins a big cigar.

CARTOON CHARACTER 1: Smoke, smoke, smoke, smoke, smoke, smoke.

Hey, mister, you got a cig, a bag, a

pipe, weed, a cigar or snuff or anything, just anything?

CARTOON CHARACTER 4: Why, of course, my good man. Have a cigar.

CARTOON CHARACTER 1: Oh, thank you, sir.

BACKGROUND MODERATOR: Give the smoker enough rope and he'll hang onto his habit.

(Whereupon the playback of the above-referenced videotape is concluded at this time.)

MR. SHOLES:

Thank you. We can turn the lights back on then.

EXAMINATION BY MR. SHOLES:

Q. Now, Doctor, that last one was from 1951; is that right?

A. That's right. The Goofy carton was 1951.

Q. That appeared to suggest that there was a difficulty that people knew about in cartoons and quitting smoking?

A. Yes. People have long -- well before 1951, and that's why it was funny. People understood that that was in the nature of smoking cigarettes or whatever, that it's very difficult to quit.

Q. Now, some of us might remember now that there were, at times there were actors who smoked in films, Humphrey Bogart, for example. Some people might say that that was glamorizing smoking.

What did you find?

A. Well, certainly, cigarettes appear in many

movies, maybe most movies that appear. Because movies depict, present real life. And when Humphrey Bogart made Casablanca, half the people in this country smoked cigarettes. So it was -- it was natural or at least realistic that smoking was portrayed. Sometimes portrayed more attractively than others.

But all through the times that it has been presented in the movies, it's also being presented in the movies that cigarettes have these qualities, that they're dangerous, that they're hard to quit,

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and that people have long recognized the problems associated with smoking.
Q. So, sir, would it be accurate to say that no matter how many Bogarts or Hepburns or whoever else were seen smoking in a movie, it didn't take away from the fact that people still knew it was hazardous?
A. No, I don't believe it did at all.
Q. Let's change subjects.
In conducting your research, you informed us that you looked at magazines of different sorts.
A. Yes.
Q. Did you also look at the READER'S DIGEST? Was that one of those magazines?
A. READER'S DIGEST was one of those magazines, yes.
Q. How many articles have appeared in the READER'S DIGEST over the years that have dealt with cigarette smoking?
A. Well, the READER'S DIGEST, which is a magazine that was really the most widely circulated

magazine in the early -- well, in the 1900s, a magazine that summarized and reprinted the most important journalism in American -- in American media, ran over the 19 -- over the years of the 1900s dozens and dozens of articles.
The READER'S DIGEST was particularly concerned with the question of smoking and health. It started back early in the 1920s and kept up very regularly presenting the problems with smoking, the health risks associated with it, and offering advice to people all through the years about how to quit.
Q. Well, how far back did the READER'S DIGEST go, I mean, in covering this issue?
A. Well, the READER'S DIGEST began in the early '20s. And in 1924, they began writing -- publishing stories about it. And they continued thereafter, after 1924.
Q. Did you put together demonstratives that show some of the articles that appear or examples of the articles that appeared in the READER'S DIGEST?
A. I did.
MR. SHOLES:
Your Honor, we request permission to prescreen DDA-1008.
MR. MURRAY:
No objection.
MR. SHOLES:
Move to publish.
THE COURT:
You may publish it.
EXAMINATION BY MR. SHOLES:
Q. Professor, are these examples of some of the

articles that appeared in READER'S DIGEST?
A. Yes.
You see there on the top left, I think the first -- the first article, "Does Tobacco Injure the

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Human Body?" Of course, it's a summary that shows how or gives the evidence that it does injure the human body.

And then it goes on: 1935, 1938, 1940. The 1940 example on the bottom left, "I Quit Smoking" is one of their favorite articles. They ran this several times. It's advice about how to quit. So this is just a small sample of the READER'S DIGEST's particular commitment to the smoking and health issue.

Q. Well, Doctor, were a lot of people reading the READER'S DIGEST back during this time?

A. Yes. READER'S DIGEST was the most widely circulated American magazine in the 1930s and 1940s and into the 1950s. Circulation, an actual print run of more than ten million magazines. And the READER'S DIGEST was the kind of magazine that you found in doctors' offices, in waiting rooms, at the bus station. It was the kind of magazine that was passed along among friends and relatives. So it had really a much larger readership than that ten million.

It was the most influential magazine in its day, not so influential now. But when you look at what people were interested in in the 1940s and 1950s, especially, READER'S DIGEST was really important.

Q. Well, Doctor, did there come a time when the

information in the public media became focused on the question of cigarette smoking as a cause of lung cancer?

A. Yes.

As I was talking about earlier this morning about Dr. Ochsner, you know, Dr. Ochsner was the first -- he published an article in 1939. In the late '40s, '48, '49, Dr. Ochsner was still continuing to talk about it and he then began to persuade other people in the public health community about it.

And in 1949 and 1950, we see a sudden explosion of information that connects smoking to lung cancer, particularly. And that's when we really began to get a kind of flood of information about the cancer.

Q. Now, did this increased knowledge of the scientific stuff, did that get focused on by the READER'S DIGEST?

A. Yes. The READER'S DIGEST followed this issue very closely, kept up with it, addressed the specific issues about smoking and health as they arose. And they stayed with the story year in, year out.

Q. And they covered it in the 1950s; is that right?

A. They did. Yes, they did.

Q. Do you have a demonstrative that shows a little bit of that?

A. I do.

MR. SHOLES:

I move to prescreen DDA-1012.

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MR. MURRAY:
No objection.
MR. SHOLES:
Move to publish, Your Honor.
THE COURT:
You may publish it.

EXAMINATION BY MR. SHOLES:

Q. Doctor, explain this to us.

A. Okay. These are just two articles that came right at the start of this kind of explosion of information about cancer, cigarettes and cancer. And here's the story in 1950, "How Harmful Are Cigarettes?", the latest facts and figures about that.

And what this really refers to is the studies that are beginning to be seen in 1949 and 1950 that show a direct statistical correlation between the number of people who get lung cancer and how many of them are smokers. In 1950, "How Harmful Are...." You know, they repeated it. It was so important they just ran it again four months later.

MR. SHOLES:
Well, we can take that one down.

EXAMINATION BY MR. SHOLES:

Q. Earlier, we discussed Dr. Ochsner quite a bit.

A. Yes.

Q. Did the READER'S DIGEST ever publish some of his comments?

A. Yes.

Dr. Ochsner was reported on in all the major national magazines and the READER'S DIGEST,

especially, because, of course, they shared his keen interest in the subject.

Q. Do you have a demonstrative that might show what the READER'S DIGEST did in covering Dr. Ochsner?

A. Yes.

MR. SHOLES:
Your Honor, we move to prescreen DDA-1065.
MR. MURRAY:
No objection.
MR. SHOLES:
Move to publish.
THE COURT:
You may publish it.

EXAMINATION BY MR. SHOLES:

Q. Tell us about this one.

A. Okay. This is a pretty famous article that they published in 1952, "Cancer by the Carton." And in it, Dr. Ochsner is quoted and he makes a kind of prediction that sort of suggests how seriously this particular issue was being taken by people at the time.

He wrote "It is frightening...." or he was quoted as saying "It is frightening to speculate on

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the possible number of lung cancers that might develop as the result of the tremendous number of cigarettes that were consumed in the decades from 1930 to 1950."

Now, Dr. Ochsner had figured out that, you know, that lung cancer results from people who have smoked cigarettes a long time. And he had an

awareness because he had been watching this since, as I suggested this morning, since he was a medical student in about 1920, and he had a feeling that it was going to really be an increase in lung cancer. And, of course, he was right.

Q. What's the title of this article?

A. "Cancer by the Carton." Referring to a carton of cigarettes.

Q. Do you have a demonstrative that also illustrates for us how the READER'S DIGEST continued to cover this issue over the years?

A. Yes.

MR. SHOLES:

At this time, Your Honor, we'd like to move to prescreen DDA-1039.

MR. MURRAY:

No objection.

MR. SHOLES:

Move to publish.

THE COURT:

You may publish it.

EXAMINATION BY MR. SHOLES:

Q. Tell us about this one.

A. This is just another sample, small sample, of the stories that appeared in the READER'S DIGEST from 1954 to 1964. And it just takes the story through the years and focuses on new developments as they occurred. The READER'S DIGEST is real significant to -- It carried the story all the way through. It did not take advertisements for cigarettes. It was -- It was completely an antismoking magazine.

Q. Wait a minute.

You just said it was one of the largest circulating publications of its time?

A. The largest at its time.

Q. And it didn't take ads from tobacco companies?

A. That's right.

Q. Okay. Doctor, in the 1950s, early 1950s, did you find that there were scientific studies done on the issue of smoking and health?

A. Yes.

Q. What did you find?

A. Well, there were, as I suggested earlier, there were lots of them being organized and carried out. The important ones, in the late '40s, starting in 1948, Washington University in St. Louis, they got a lot of attention, run there by one of Dr. Ochsner's former professors in medical school; the

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National -- the American Cancer Society began a large study in the early 1950s; there were studies being done in England; there were studies done in various places within the United States.

And they all came to the same conclusion, using statistical evidence primarily, counting up the number of people who had lung cancer and then going back and finding out whether and how much they smoked. And there began to mount up a huge amount of scientific statistical studies that showed the connection between smoking and lung cancer.

Q. And that was -- And was Dr. Graham participating in some of those?

A. Dr. Graham did at Washington University, yes.

Q. And was he one of Dr. Ochsner's professors, I believe?

A. That's right.

Q. Now, other than the READER'S DIGEST, did other magazines cover this story?

A. Yes. Many other magazines did.

Q. Well, do you have -- What about LIFE magazine?

A. Yes, LIFE magazine, of course, was another very large circulation magazine. And it's a magazine that based a lot of what it reported on photographs. And it, too, covered this story.

Q. Do you have a demonstrative that shows some of what they did?

A. Yes.

MR. SHOLES:
I move to prescreen DDA-1007, Your Honor.

MR. MURRAY:
No objection.

MR. SHOLES:
Move to publish.

THE COURT:
You may publish it.

EXAMINATION BY MR. SHOLES:

Q. Tell us about this one.

A. Okay. This is a report in the LIFE magazine in 1953 that reported on Dr. Graham, the man at Washington University in St. Louis, who had organized a series of studies where they took tar from tobacco smoke and painted it on the backs of mice. They were trying to reproduce cancer from

cigarettes in the laboratory. And these were widely reported. There was a fascination with the mouse-painting stories.

And LIFE magazine was just one of the parts of the media that covered it with these -- with this big spread in LIFE in 1953. And one of the -- The main conclusion of the story was that tobacco tar causes cancer in mice. And, again, it picks up on the statistical studies that says that -- that suggested that the rise in lung cancer was connected to the increase in tobacco -- in cigarette use.

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Q. I want to make sure I heard you correctly earlier. What type of magazine was LIFE?
A. LIFE was a big magazine with -- it ran lots of photographs. It depended more on photographs than words for its reporting. Very widely circulated, the secondmost widely read magazine in the 1950s. Again, a magazine that you would see in the doctors' office or the waiting room at the bus station. A magazine that was passed along from, you know, house to house, family member to family member.
Q. Was this the only story in LIFE magazine regarding this issue?
A. No, LIFE kept up with the story as the READER'S DIGEST did.
Q. Do you have another example of what's in LIFE -- what was in LIFE magazine?
A. I do.
MR. SHOLES:
Move to prescreen DDA-3026.
MR. MURRAY:

No objection.
MR. SHOLES:
May we publish?
THE COURT:
You may publish it.
EXAMINATION BY MR. SHOLES:
Q. Doctor, tell us about this one.
A. Okay. This is just another example of a story in LIFE magazine that does what the READER'S DIGEST did, which was not only to report on the connection between smoking and lung cancer and other diseases but, also, to give its readers advice and direction about how to quit smoking.
Okay. Now, LIFE magazine, being well-illustrated, created a series of kind of cartoon figures here to teach people a method for, as it says, to break one's self of the habit of smoking. It's a hard, uncomfortable thing to do, it said, but there's a way to do it. And LIFE magazine, like READER'S DIGEST and like lots of other magazines, instructed their readers on how to do that.
Q. Now, wait a minute, Doctor.
You mentioned cartoon characters. And we see cartoon characters up there. Was LIFE a children's magazine?
A. No, it was an adult magazine. Children read it, I read it as a child. But the content is really aimed at the average adult.
Q. In your research, did you see -- is it unusual to find people using cartoon characters to try to relay messages to adults?
A. No, it's very commonly done.

Q. So every time I see a cartoon character doesn't mean I should think it's for a child?
A. No.
Q. Thank you.

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Well, what about other magazines? Were there any other magazines that covered or talked about this issue?

A. Yes, there were -- there were news magazines, of course, TIME and NEWSWEEK, U. S. NEWS AND WORLD REPORT, all of those were weekly news magazines that lots of people read and, again, that were handed along a lot. There was also -- There were many of the special interest magazines, magazines that are not news magazines but focus on a particular group in society.

Women, for example, the women's magazines, LADIES' HOME JOURNAL, BETTER HOMES AND GARDENS, those kinds of magazines ultimately began to report on the smoking and health story, sort of in terms of here's how a woman, a housewife, might go about seeing the risk herself and learning how to quit smoking.

You also saw some of the same -- You saw the same story reported in magazines designed for particular audiences, ethnic groups and particularly for African-Americans.

Q. Well, --

A. EBONY and JET magazine, for example.

Q. Do you have a demonstrative that shows us what appeared in EBONY and JET?

A. I have, yes, some examples from EBONY and JET.

Q. Again, these are not all that appeared? These are just some so that we could not have to be here all day; is that right?

A. That's right. Just a small sampling.

MR. SHOLES:
We move to prescreen DDA-1016.
MR. MURRAY:
No objection.
MR. SHOLES:
May I publish?
THE COURT:
You may publish.

EXAMINATION BY MR. SHOLES:

Q. Professor, what are we looking at?

A. Okay. We just are looking at some articles from EBONY. Across the top are the -- is the EBONY article from 1962, "HOW TO LIVE LONGER." And, of course, it talks about quitting smoking there. EBONY, of course, published beginning in 1945 and had a very large readership among African-Americans, especially. JET magazine was a weekly magazine, kind of news magazine that African-Americans published starting in 1951.

And here are a couple of articles: One headlined from 1974, "SMOKERS ARE SUSCEPTIBLE TO MORE HEART ATTACKS"; the other one, "THE RISE OF CANCER IN BLACK MEN." So they were -- those kind of -- that kind of health message appeared in all kinds of special interest magazines.

Q. Now, Professor, you might not know this, but some of us might remember with JET magazine, we might look at the pictures or at least one

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particular set of pictures first. Does that mean that nobody ever read the articles in JET?
A. Well, I mean, my research is that people did read the articles in JET. Maybe looked at the pictures, too, or looked at the pictures one day and read some of the articles, yes. But I believe JET had quite an influence because people did read it.
MR. SHOLES:
Thank you. We can take that down.
EXAMINATION BY MR. SHOLES:
Q. Dr. Norrell, let's change a little bit.
Was there any television coverage about the scientific developments linking smoking and cigarettes to lung cancer?
A. Yes.
Q. Describe for the jury what your research -- what research you did on the coverage of that issue on television?
A. Well, television, of course, develops later. Television is a way of -- a means of communication that really developed in the 1950s. In 1950, there were very few televisions in this country. By 1960, nearly everybody had a television. So during the 1950s, television emerges as an important means of getting news and information. By the 1960s, it becomes the main means of getting news and information for a lot of people.
And with the emergence of television, we begin to see television news that focuses on the smoking and health issue because it's a major issue in the 1950s. And so television, television news reporters picked up on it and developed news stories

about it. Just as the people in the magazines and the newspapers were doing.
Q. Well, were there any sort of reporters who were significant at that time?
A. Yes, there were several. The most important journalist, television journalist of the 1950s was a man named Edward R. Murrow who had been a wartime reporter in Europe during World War II, a radio reporter, came home and became a television reporter as television emerged. And he was, by far, the most influential television newsman in the 1950s. Really, far more influential relative to others than anybody is today. He was a much bigger and more commanding figure than any news anchorman is today.
And Edward R. Murrow had a show that ran a lot of times on Sunday afternoons and evenings called See it Now. See it Now is a television magazine show. It's kind of like 60 Minutes is today and a lot of those other television news magazine shows.
The difference was that usually on See it Now, Edward R. Murrow just took one subject and did the whole show on that subject. And in 1955, he did two shows on the smoking and health issue.
Q. Did you bring some clips of that?

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A. I do. I have clips from those two shows.
MR. SHOLES:
Your Honor, we move at this time to screen DDA-1070, which are some television clips from See it Now.
MR. MURRAY:
No objection.

MR. SHOLES:
Thank you, Ms. Mouton.
May we publish, Your Honor?
THE COURT:
You may publish it.
MR. SHOLES:
Proceed.
(Whereupon the above-referenced videotape is played back at this time as follows:)
MR. MURROW: Good evening. This is See It Now, produced by the partnership of Friendly and Murrow. Tonight the first of two reports on cigarettes and lung cancer immediately after this message from ALCOA, the Aluminum Company of America.
THE WITNESS:
Now, that was Murrow himself there.
(Whereupon the above-referenced videotape is continued to be played back at this time as follows:)
MR. MURROW: Tonight we present a report by scientists on the relationship, if any, between cigarette smoking and lung cancer. We, obviously, accept responsibility for the editing. But the facts will be presented by scientists who are preeminent in their field.
This is the statistical department of the American Cancer Society where an

extensive survey of the possibility of the relationship between cigarettes and lung cancer has been going on for three years.
This is a cigarette smoking machine at Washington University at St. Louis where investigations have been going on since 1948. This is a mechanical smoker at one of the major cigarette companies, which does similar investigating.
Tonight and next Tuesday night, some of the nation's most qualified investigators will be reporting on this problem.
DR. GRAHAM: In 1948, one of our medical students, Ernst Wynder by name, came to me with the suggestion that he make a study of our patients with cancer

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of the lung to see how many of them or approximately what percentage of them were heavy cigarette smokers.

As the result of the study of about the first fifty cases showed that there was a very close association between excessive cigarette smoking and the incidence of the disease in these patients, we felt greatly encouraged by the study, we pursued it until we had made an examination of more than 600 patients.

And we found, as a result of that examination, that it was extremely rare

to find anyone who was not an excessive cigarette smoker. We, therefore, in 1950 undertook a series of experiments on mice with the idea of attempting to produce cancer in these mice by using the tar obtained from cigarette smoke.

MR. MURROW: Next, Dr. Ernst Wynder and research assistant Adele Croninger demonstrate the cigarette smoking machine that led to their findings.

DR. WYNDER: And this bottle contains the amount of tar to which the average heavy cigarette smoker is exposed to over a given year's period of time.

MS. CRONINGER: All these animals were painted three times a week with the cigarette tar solution. And in the eleventh month of painting, we had our first cancer. Unless you would like to look at an early cancer on the back of the mouse.

DR. WYNDER: We believe that the present evidence strongly indicates that tobacco smoking, and particularly cigarette smoking, is a major cause of lung cancer.

DR. HAMMOND: We at the American Cancer Society are making a study of smoking habits and death rates among 187,000 white men. The heavy cigarette smoker had about nine times the death

rate from lung cancer than did those men who never smoked. Even moderate cigarette smoking had a considerable effect in that the moderate cigarette smoker had a lung cancer death rate about four times as high as men who never smoked.

So it is now established, in my opinion, beyond a reasonable doubt that cigarette smoking greatly increases the probability of developing lung cancer.

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In my opinion, people should be warned of the dangers. And they are being warned. What they then want to do, whether they wish to smoke or not, is their own business.

(Whereupon the playback of the above-referenced videotape is concluded at this time.)

MR. SHOLES:

Thank you. Can we turn the lights back on now?

EXAMINATION BY MR. SHOLES:

Q. Doctor, who were some of these men who appeared on that?

A. Okay. The older fellow after Murrow, the first man who came on, the older guy was Evarts Graham. And the guy with the German accent was his young assistant, Ernst Wynder. They had worked on, first, on the statistical study at Washington University, and then they were trying to reproduce it in the lab, and they came up with the mouse

painting story.

And the last fellow there was Cuyler Hammond, Dr. Hammond of the American Cancer Society. And he's the fellow, one of the fellows who ran this big study of -- he said 187,000 smokers to find out the incidence of lung cancer among smokers. Really looked at how many -- the people who got lung cancer to see how many of them were smokers. And that's how, essentially, they established the connection between smoking and lung cancer.

Q. Now, Doctor, you told us that we've edited this thing, that everything isn't on there. Did the tobacco companies get a chance to speak?

A. Yes. Yes, they did.

Again, Murrow was a good journalist, fair-minded journalist. And he included in this report comments from the tobacco research group. The Tobacco Institute established a research group that they had a head of that to give comment. And they had one of the tobacco company executives talk. And they essentially said, you know, that proof had not been established that this was a statistical association that had been made.

Q. Well, Doctor, even though -- just because you had people from the tobacco companies telling a different story or disagreeing or challenging those results, did it take away from the public's awareness that smoking was risky?

A. Well, it's clear from the whole -- the whole scope of evidence at the time that the public got the message. There's so much reporting done in the early 1950s. So many times was the report of the

studies reprinted in the newspaper, that it -- that it was really kind of an avalanche of evidence about the connection between smoking and health.

And during those years, the early 1950s,

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there were regularly comments made or responses from the tobacco industry included in those stories. And I gave an example earlier this morning about that.

But what you see is what came out of this, all of this reporting and all of this information that poured forth in the early fifties, was an overwhelming -- overwhelming connection that the public makes -- made at that time between smoking and lung cancer. And it's clear when you try to -- when you measure, look at how you measure public opinion through polls, that the methods that cigarettes were dangerous, that cigarettes could kill you, that lung cancer was possibly a cause of it, that smoking was possibly a cause of lung cancer, you know, that shows up that people were getting the message.

Q. Well, I guess now is the time. You have now said that people were getting the message and you mentioned polls. Were polls and surveys one of the ways that you used to find out whether or not people actually understood or heard the message?

A. Yes, polls that I used to just as a kind of gauge to see if all of this information was getting through to the public. And I think the polls indicate that it was.

Q. Well, what sources did you use for polling surveys?

A. Well, I mainly used the polls that were

available in the public area, that is, the polls that were printed in the newspapers. And mainly those by the Gallup organization, the Gallup Poll. George Gallup was the most well-known pollster at that time in the 1950s.

He had a newspaper column and he would have a -- do a poll and then he would write about his polls in the newspapers and explain what they meant, and he would put them in some kind of context. And I relied mainly on those polls.

Q. Did you bring some examples of those?

A. Yes.

MR. SHOLES:

Your Honor, we move to publish DDA -- prescreen DDA-1069.

MR. MURRAY:

No objection.

MR. SHOLES:

Move to publish.

THE COURT:

You may publish it.

EXAMINATION BY MR. SHOLES:

Q. Professor, what does this poll show?

A. Okay. This is a poll that was done a lot of times. The Gallup organization was good because they would get a question that they thought was important and they would ask it regularly over the course of a lot of years many times. And the question was "Have you heard or read anything recently to the effect that cigarette smoking may be a cause of cancer of the lung?"

And in June and July of 1954, 90 percent of

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Americans said they had heard or read something that had informed them that cigarettes may be a cause of lung cancer. Ninety percent, nine out of ten Americans, had gotten that information.

Q. Is that a significant number?

A. Yes, that's a very high number. There are relatively few bits of information that nine out of ten Americans will say they know or have heard.

Q. Professor, have you seen in your research any indication that the youth, the young people, might have gotten the message?

A. Yes.

Of course, by the 1950s, youth are, of course, being exposed to the same kinds of media reports. If not reading it themselves, they're getting reports to them by their parents and friends.

Of course, as I suggested earlier, they're being taught this information in their health classes at school, they're getting the information through television and the movies, from a lot of different directions.

Q. I noticed here that this poll says, "Have you heard or read?" It doesn't say, "Do you believe it?" Is there a difference between what you've heard and what you believe?

A. Yes, you can hear -- be given information and you may choose not to believe it. So the polls that I look at, I have tried to distinguish between if they are informational or awareness polls or whether they are belief polls, what people say that they actually believe of a particular thing.

Q. Well, did you bring some examples of the stuff that -- polling information that dealt with teenagers?

A. I did.

MR. SHOLES:
Your Honor, we'd like to prescreen DDA-1068.

MR. MURRAY:
No objection.

MR. SHOLES:
Move to publish.

THE COURT:
You may publish.

EXAMINATION BY MR. SHOLES:

Q. Guide us through this one.

A. Okay. This is a poll that was done in 1959 at Harvard University. And it's a similar question to the Gallup question that I showed earlier, "Have you heard -- Have you ever heard that lung cancer may be caused by smoking?" And this was done by among nearly 7,000 students.

And among the junior high school students, the younger students, 90 percent or nine out of ten had heard that lung cancer might be caused by smoking. And among the high school students in

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1959, 95 percent had gotten that information that lung cancer might be caused by smoking.

MR. SHOLES:

We can take this one down.

EXAMINATION BY MR. SHOLES:

Q. Professor, as a part of your research, did you examine a magazine called Senior Scholastic?

A. I did.

Q. What is Senior Scholastic?

A. Senior Scholastic is a newspaper that is published for high school students. It was typically distributed in the schools. It was kind of like The Weekly Reader that elementary school students got.

It gave the news of the day, the important news that had been reported the previous week. And it summarized it in a way, explained it in a way that a student who was at that age could understand it. And Senior Scholastic was widely read by high school students around the country and in Louisiana.

Q. Did Senior Scholastic conduct surveys about the smoking and health issue?

A. They did.

Q. And do you have an example of that?

A. Yes, I do.

MR. SHOLES:

Move to prescreen DDA-1060, Your Honor.

MR. MURRAY:

No objection.

MR. SHOLES:

Move to publish.

THE COURT:

You may publish it.

EXAMINATION BY MR. SHOLES:

Q. Doctor, what does this show us?

A. Well, this is a -- this is a belief poll. This is a poll that actually asked students, more than ten -- nearly eleven thousand students, whether they believed there was a connection between smoking

and lung cancer in 1959, the same year, that that other poll had asked people, students, if they were aware of it.

And in this poll, 97 percent of students believed that there was a connection between smoking and lung cancer. As the poll suggests -- As the demonstrative suggests, there were some variations of what they believed. But 97 percent of them believed that it caused it.

And the Senior Scholastic articles that accompanied this and that reported on this poll later emphasized that 97 percent figure, which was nearly -- I mean, that's about as close to everybody believing something as you can get.

Q. And I guess I need to emphasize here, Doctor. Some of these were -- would you call them awareness polls and others are belief polls? Here you can tell us that there is a distinction?

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A. Yes.
The poll that we showed before was an awareness poll. "Are you aware that smoking has been connected to lung cancer?" This is a question that says, "Do you believe that there may be a connection between smoking and lung cancer?"
Q. And pursuant to looking -- after looking at these two, you are now of the opinion that as far back as 1959, junior and high school kids not only heard it but they believed it?
A. Yes.
Q. Professor, did Senior Scholastic also do some written stories about this issue?
A. They did.

Q. And did you bring us some copies of those?
A. Yes.
MR. SHOLES:
Move to prescreen DDA-1037. Move to publish.
THE COURT:
Objection? Any objection by plaintiffs' counsel?
MR. MURRAY:
I'm sorry, Your Honor. No, I do not.
THE COURT:
You may publish.

EXAMINATION BY MR. SHOLES:

Q. What do we find here?
A. Well, these are just two examples from the Senior Scholastic. The magazine is telling -- The newspaper is telling students in 1954, you know, that the American Cancer Society wants them to know that there is an association between cigarette smoking and cancer.
And in 1964, ten years later, these are just two examples, that gives more specific information, that cigarette smoking is the cause of bronchitis and emphysema. And, of course, along the way, they had already reported extensively on the connection to lung cancer. So this newspaper is really covering, you know, the various diseases that are connected to smoking.
Q. Professor, did anybody else, any governmental agencies, conduct surveys?
A. Yes. The Department of Health, Education and Welfare, the government, the federal government

agency that historically has been charged with looking after health -- one of the agencies, anyway -- and it did surveys in the late 1960s, again, specifically on the question of what the information or what teenagers were thinking about smoking.
Q. And did you bring us a demonstrative that shows what the Department of Health, Education and Welfare found?
A. I did.
MR. SHOLES:

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We'd move to prescreen DDA-1067.
MR. MURRAY:
No objection.
MR. SHOLES:
Move to publish it.
THE COURT:
You may publish it.
EXAMINATION BY MR. SHOLES:
Q. Guide us through this one, sir.
A. Okay. This is just a question that was asked of a lot of boys and girls, ages 12 to 18, in 1968. The question was "Would you say smoking is harmful to health?" And 91 percent agreed that it was. Again, that's a very high figure, more than nine out of ten.
Q. And this was in the sixties. So the story didn't just stop? Kids didn't just start believing it in the fifties and then stop? The information stayed out there?
A. That's absolutely right, yes. And it follows the polling trends among adults as well. Adults are

becoming more and more convinced of the -- they're becoming to believe, you know, almost universally that smoking causes lung cancer and other diseases.
Q. Well, Professor, based upon your investigation, through the 1960s and up until today, are the youth of this nation informed or aware of the risks associated with smoking?
A. Yes, I believe they were.
MR. SHOLES:
Thank you. We can take that exhibit down.
EXAMINATION BY MR. SHOLES:
Q. Professor, are you familiar with the 1964 Surgeon General's report?
A. I am.
Q. What kind of publicity did the 1964 Surgeon General's report receive?
A. Well, the 1964 report from the Surgeon General was a government report that had been waited for a long time. President Kennedy had appointed a commission in 1962. They had done a lot of research, gathered together research that other people had done, really, and it was anticipated -- it was very heavily anticipated.
It was covered -- When it was announced on January 11th, 1964, all the newspapers in the country practically led their newspapers with that story. It was a front-page story almost everywhere. And there were television reports.
And then the following week in the news magazines, TIME and NEWSWEEK and all the big magazines, there were big stories on the Surgeon

General's report. And then from then on and afterward, during the subsequent weeks and months and years, the Surgeon General's report of 1964 was looked to as kind of the main statement of the

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United States Government that smoking was a dangerous activity.
Q. Was it a significant story in this country?
A. Yes.
Q. Did it receive significant coverage by all of the media outlets?
A. Yes.
Q. Did it receive significant coverage on television?
A. Yes, it did.
Q. Now, did you bring us an example of one of the news reports covering the '64 Surgeon General's report?
A. Yes. I have the CBS news report that ran the night of January the 11th.

MR. SHOLES:

And that's DDA-1071. Request permission to screen DDA-1071.

MR. MURRAY:

No objection, Your Honor.

THE COURT:

You may publish it.

MR. SHOLES:

Proceed.

(Whereupon the above-referenced videotape is played back at this time as follows:)

MR. TERRY: Out of these long and exhaustive deliberations, the committee has reached the overall judgment that cigarette smoking is a health hazard of sufficient importance to the United States to warrant remedial action. Cigarette smoking is related to higher death rates in a number of disease categories.

In view of the continuing and mounting evidence from many sources, it is the judgment of the committee that cigarette smoking contributes substantially to mortality from certain specific diseases and to the overall death rate.

MR. REASONER: That was Dr. Luther Terry, the Surgeon General, opening the report of his advisory committee on smoking and health.

BACKGROUND MODERATOR: This is a CBS news extra on smoking and health, the findings of the Surgeon General's committee.

MR. REASONER: Almost from the moment that cigarettes were introduced, they were attacked. But the attacks took a new turn ten years ago and culminated in today's report by the Surgeon General's committee. This, in summary, is what the committee says.

Cigarette smoking is a major cause of lung cancer in men. And data on

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women smokers points the same way. Cigarette smoking is a significant cause of cancer of the larynx and probably the most important cause of chronic bronchitis. Cigarette smoking may be related to other lung diseases. Male smokers have a much higher death rate from heart disease, although it's not proven that smoking is the cause.

On the question of filters, the committee says there is no evidence that they do any good. But it didn't exclude the possibility that an effective filter might be developed. In short, the committee says if you smoke cigarettes, you increase your chances of dying early.

MR. TERRY: We saw that in the case of cancer of the lung, and there are other types of cancers mentioned here, also in bronchitis and emphysema, I believe, that there is a direct cause -- causal relationship. This is -- This conclusion is based on converging evidence of several different types. I would advise anyone to cut -- to discontinue smoking cigarettes.

REPORTER: Did the committee find any report which raises the doubt about smoking as a cause of lung cancer?

UNIDENTIFIED SPEAKER: The committee considered all sorts of evidence,

opinions, judgments. And I'm sure it's no news to you that there are people in this country who do not think that -- or who think that cigarette smoking is not a cause of lung cancer. We are fully aware of this and reached the judgment we did, despite these other opinions.

REPORTER: In other words, it was a very firm conclusion?

UNIDENTIFIED SPEAKER: Indeed, I regard it as a very firm conclusion.

MR. REASONER: In this kind of a country, it comes down to you, whether you like it or not. No one is going to forbid an adult to smoke. And it is now quite clear that no one is going to tell him it's good for him, either. The decision is his. The decision and the health that may depend on it.

This is Harry Reasoner. Good night.

(Whereupon the playback of the above-referenced videotape is concluded at this time.)

MR. SHOLES:

Thank you. May we turn the lights back

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on?
EXAMINATION BY MR. SHOLES:
Q. Professor Norrell, who was the reporter on this?
A. That was Harry Reasoner, the fellow who was later on the anchor for CBS News and then I think moved on to another network.

Q. Now, --
A. He was on 60 Minutes, I think.
Q. Now, I know that when you watch television, you see all kinds of news programs. There are lots of them on TV. I wanted to turn now, to look back at -- you told me we should look at it in hindsight. What's the significance of this kind of a show back in those times as opposed to today?
A. Well, there wasn't nearly as much television news, magazine-type reporting or documentary reporting. It was much less frequent. There would be only a, you know, a few dozen shows a year. Now we have, you know, they're on every night.
So a show like this CBS Special Report on Smoking and Health would have been, you know, a much larger influence or be seen as a bigger deal, if you will, in the news environment of 1964 when it came out.
Q. So that's the kind of -- is that the kind of thing that the next day people would have been talking to each other about?
A. Oh, yes. And people did, in particular, talk about this show and what it meant. It had a tremendous influence.
Q. Professor, in your opinion, did the report have any impact on what the federal government told the public about the risks of smoking?
A. Well, the Surgeon General's report of 1964 gathered a lot of support and commitment to doing more. And as you -- from 1964, we move forward and we see an increased commitment on the part of people in the public health community, at least some of

them, to put warnings on labels, to move to try to stop advertising for cigarettes or at least to limit it. There's a much -- It leads to more regulation of cigarettes as a product.
Q. Well, the warnings, you say, came out shortly after this?
A. Yes.
In 1965, the Congress passed the cigarette warning law. We got the first cigarette warning to go on the cigarette package in 1966. This is the first time we have a consumable product in this country that has a warning put on it. And that is in -- that came in 1964, I'm sorry, 1966. The law was passed in '65 and the label went on -- the warning went on the package in '66.
Q. Now, doctor, what's the significance of -- You said a consumable product, the first one to have a warning. What's the significance of that?

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A. Well, I mean a product that, you know, you put it, somehow or another, put it into your body. We have, you know, a number of consumable drugs and products now that have warnings on them. But cigarettes were the first one that came in -- There were none others until cigarettes got a warning in 1966.
Q. You mean before there were warnings about alcohol, before there were warnings about drugs, there were warnings on the cigarette pack?
A. That's right.
Q. Did you happen to bring us a copy of the warning that appeared in 1966?
A. I did.

MR. SHOLES:
Your Honor, at this time we move to prescreen DDA-1017.
MR. MURRAY:
May we approach, Your Honor?
MR. SHOLES:
Move to publish.
I'm sorry. You said objection?
MR. MURRAY:
May we approach?
MR. SHOLES:
Of course.
(Whereupon a bench conference is held at this time as follows:)
MR. MURRAY:
Your Honor, I approached to make this statement for the record. It seems to me that there's an inconsistency between the suggestion that the warnings issue is preempted in this litigation and then the defendants portraying warnings.
It seems to me that that opens the door for us to question the adequacy of those warnings. And I just want that on the record so that they understand our position.
THE COURT:
It's on the record.
MR. LONG:
Our position is that they've still got a concealment claim, that the companies concealed information. Certainly, as to concealment, then information on the warning

is relevant. We don't think it opens the door. And the warnings already came in in Dr. Burns' cross-examination the first week of the case.
THE COURT:
It's about time for our mid-afternoon break. We're going to recess.
Mr. Sholes?
MR. SHOLES:
Yes, Your Honor.
THE COURT:

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May we recess?
MR. SHOLES:
Yes, we'll do that now.
(Whereupon the bench conference is concluded at this time.)
THE COURT:
We're going to recess at this time until 3:00 o'clock for the mid-afternoon recess.
(Whereupon the jury is excused at this time.)
THE COURT:
Let the record reflect the jury has left the courtroom.
Anything for the record by plaintiffs' counsel?
MR. RUSS HERMAN:
Yes, Your Honor.
I have the prior testimony of Mr. Viscusi as to the money that was paid him by the tobacco companies in sworn testimony in other trials, in other depositions. I can

either put that into the record now or wait until we recess this afternoon.
THE COURT:
If you're prepared to do it now, you certainly may.
MR. RUSS HERMAN:
I'd like to do it now.
MR. WITTMANN:
Your Honor, we would object to him doing that now. There was a stipulation that the money paid to the individual experts was not going to be received.
THE COURT:
No one on that side was listening to you, Mr. Wittmann. Do you want to repeat that, please?
MR. WITTMANN:
There was a stipulation that the amount of money paid to the individual experts would not be offered in evidence.
MR. RUSS HERMAN:
I'm not offering it in evidence. I'm offering it for the purpose of showing that a witness on this stand voluntarily gave forth information which was perjurious.
MR. WITTMANN:
Well, I would suggest Mr. Herman file his motion for perjury or whatever he's going to file. We'll respond to it. I've read what he asked me to look at. And he's just wrong.
MR. RUSS HERMAN:

Well, I may be wrong. I'd like to go ahead with my evidence now. And I don't plan to file a written motion on a matter like this. If you want to correct the record,

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fine.
MR. WITTMANN:
I don't want to correct the record.
THE COURT:
Just a moment, gentlemen. Address The Court and not each other.
Mr. Herman, you have the floor.
MR. RUSS HERMAN:
Yes.
Your Honor, I don't believe it takes a written motion. I'm going to put it on the record. And then counsel for the defendants may do with it what they please. If they feel they have an obligation to do something about it, fine; if they feel they have no obligation, then they can make that decision. But I think I'm entitled to put it on the record. And I announced in advance that I would.
THE COURT:
Anything else by plaintiffs' counsel?
MR. RUSS HERMAN:
Yes, I'd like to go ahead.
THE COURT:
All right. But I'm going to give Mr. Wittmann an opportunity to respond, if he'd like to.
MR. RUSS HERMAN:

Sure.
THE COURT:
Mr. Wittmann.
MR. WITTMANN:
I don't know what he's going ahead on. He said before lunch that he wanted to file a motion, I thought, for perjury or to have us withdraw something. I've looked at the page Mr. Herman asked me to refer to, Your Honor. And what he says is consistent --
THE COURT:
Is it yesterday's testimony?
MR. WITTMANN:
Pardon?
THE COURT:
Is it the pages of yesterday's testimony?
MR. WITTMANN:
Yes, Your Honor. It's Page 18733.
THE COURT:
At the luncheon recess, Page 18733?
MR. WITTMANN:
Yes.
THE COURT:
I have also read it.
MR. WITTMANN:
And the witness does not say that he was never paid by the law firms. In fact, the question that was asked to him immediately preceding the second survey was:
"Now, on direct when we talked before the holiday break, you told this

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jury that some of the surveys were funded by law firms; right?

And the witness says:

"ANSWER: Yes. Three of the surveys were funded by law firms.

"QUESTION: Okay. There's no secret about that; right?

"ANSWER: That's correct.

"QUESTION: And, in fact, because the first -- the 1985 survey was funded by law firms, you went ahead and did your own survey without telling anybody to verify the accuracy of that survey; right?

"ANSWER: Right. Not only did I not tell them; they didn't give me any money for it or anything else.

"QUESTION: And you've published these results. And anyone else can go out there and challenge the actual validity of these results, if they want to?

"ANSWER: That's correct."

THE COURT:

Well, I think it depends on the interpretation of the comment "or anything else."

MR. WITTMANN:

In connection with that survey.

THE COURT:

Well, that's one interpretation. I suspect the plaintiffs have a different --

And you're on the record. If there's anything else you want to put on the record, I'll allow you to at this time.

MR. WITTMANN:

I'm just responding to what Mr. Herman said before lunch.

THE COURT:

I understand.

MR. MUEHLBERGER:

Your Honor, I'd like to make a point for the record as well.

THE COURT:

Mr. Muehlberger, you have the floor.

MR. MUEHLBERGER:

Thank you.

First of all, this objection was not made yesterday at the time that the testimony was made. In fact, we had several hours of downtime yesterday that it could have been made when Dr. Viscusi was still here. So it comes way too late to be making this objection at this point in time.

And the reason the objection wasn't made --

THE COURT:

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I don't view it as an objection. I don't think it's an objection. And if it is an objection, you're correct, it's untimely.

MR. MUEHLBERGER:

My second point, Your Honor, is the reason it wasn't made is because it was clear from the context Dr. Viscusi was talking

about that no tobacco company paid him to do his surveys or for his research. And it was clear from the context that's what he was talking about. And everyone understood that.

And, finally, earlier in his testimony, Dr. Viscusi acknowledged that he had been employed -- and he used that word, "employed" -- by the law firms, so it was clear there was an employment relationship for the payment of funds.

So there was no misrepresentation. Certainly, there was no perjury. This comes way too late. And it's another red-herring or distraction raised by plaintiffs' counsel.

THE COURT:

Mr. Herman, do you wish to present something of record?

MR. RUSS HERMAN:

Yes.

It's not an objection. As I understand our code of ethics, I've got a duty to point this out to The Court as an officer of The Court. The answer was not as read by Mr. Wittmann at Lines 23 and 24.

The answer was, quote, "Right. Not only did I not tell them; they didn't give me any money for it or anything else," end quote.

It was said to the jury, I believe it was premeditated by the witness. Irrespective of that, I think someone had a duty to correct it.

In United States District Court,

District of Nevada, CA Number CV-S-01-0601-KJD, in the matter of Rivera versus Philip Morris, he says, at Page 64, Lines 5 and 6, "ANSWER: I don't know an exact amount, but I do know that it's over -- it's above six hundred thousand dollars" in response to a question as to how much he had been paid at that time by the tobacco companies.

In Miles versus Philip Morris, trial testimony in case Number 200 L 0112, in the third -- in the Circuit Court, Third Judicial District Court, Madison County, Illinois, just last month, March 4th, 2003, the witness indicates that he was paid around seven hundred thousand dollars. And that's at Page 7 of that transcript.

In Lucier versus Philip Morris, Superior

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Court of California, County of San Francisco, Number 312610, deposition February 7th, 2000, at Page 10, he indicates he's been paid over six hundred thousand dollars.

In Barnes, September 24th, 1997, versus American Tobacco Company, deposition, he indicates at Pages 16 and 17, his hourly rate, the number of hours, and how much he's been paid.

In Re: Tobacco Cases II, Number JCCP Number 4042, his deposition of Wednesday, February 20th, 2002, he indicates, quote, "You know, I don't keep an exact tally but probably over six hundred thousand dollars."

And that is at Page 149.

In Supreme Court of the State of New York, Inzerilla versus Philip Morris, Number 11754-96, in court testimony under oath, at Page 2428, "QUESTION: Okay. And by the way, how much have you earned from the tobacco companies so far?

"ANSWER: Since 1987, it would be over six hundred thousand dollars."

In his deposition, second -- Well, that's not clear. I won't read that one.

In the Scott case, October 13th, 2000, he indicates he no longer accepts work from the cigarette companies at 425 an hour. Now his rate is 550 dollars an hour. That's at Page 37. I believe that deposition was defended by Mr. Muehlberger.

In the Supreme Court of the State of New York, A-P-O-S-T-O-L-O-U, Apostolou, Number 34734/00, versus Philip Morris, R. J. Reynolds and Liggett, January 8th, 2000, at Page 6376, QUESTION: "How much have you received from the tobacco companies?

"ANSWER: I don't have an exact tally, but it could be as high as five hundred thousand dollars" at Page 6377.

In United States District Court for the District of Columbia, U.S. versus Philip Morris, July 25th, 2002, in deposition, he gives his hourly rate at Page 46 now of 750 dollars an hour.

In Harvey versus Global, May 9th, 2002,

Number 312112, he says at Page 6, "As far as I know, I send my bills to Mr. Murphy. And whether Philip Morris is also retaining me or whether they are simply here to watch, I don't know." Dennis L. Murphy, Jones, Day, Reavis & Pogue. At Page 250, he indicates that over the 15 or 16 years, the total is over six hundred thousand dollars.

Now, I think, with all this testimony, for this witness to look at a jury directly in a nonresponsive answer to a question, a

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nonresponsive answer, and say that he's never received anything else in terms of remuneration from a tobacco company is, I believe, perjurious and, at worse or best, absolutely misleading.

That's all I have to say, Your Honor.

MR. WITTMANN:

May I respond, Your Honor?

THE COURT:

Yes.

MR. WITTMANN:

I really can't help it that Mr. Herman can't understand what the witness said. But what the witness said and what's in the transcript is "Right...."

THE COURT:

No, you've read it once, Mr. Herman read it once, and I've read it in private, and it's written down.

MR. WITTMANN:

Yes, sir.

THE COURT:

And I don't believe anybody has disputed the accuracy of the transcript. If you want to put it into the record again, but I don't see that it's necessary.

MR. WITTMANN:

I just want to say, Your Honor, it's clear to me and anybody else who reads it, even as he runs, that anything else that's modifying money paid for it is talking about that second survey. And this whole exercise, I don't know what it is, but I think it's an exercise in futility.

And that's all I've got to say.

THE COURT:

Anything else by defense counsel before we recess?

We'll take about five minutes after 3:00 as the duration of our recess.

MR. RUSS HERMAN:

Your Honor, I have one other matter.

THE COURT:

Mr. Herman.

MR. RUSS HERMAN:

I just received from Mr. Copley or we got it at the lunch break, Steve tells me, ten deposition designations they wish to be heard and a requested order of hearings as follows. I understand that one of the days that was requested was Friday.

THE COURT:

Yes. There's a letter from Mr. Copley

addressed to me and to Mr. Gianna and a copy to you by FAX requesting --

MR. RUSS HERMAN:

Yes.

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I see on here for Friday on this list, M. Johnston, C. Levy, S. LeVan, J. Bonhomme, all Philip Morris scheduled for designations. And we have our annual office meeting at the Jazzfest scheduled for that day. And I'm going to ask that if that is one of the days that, since Steve Herman and I have responsibility for Philip Morris, that the Philip Morris depositions not be scheduled for hearings on that day and that the other depositions be scheduled.

THE COURT:

Which are the Philip Morris depos that you think are listed?

MR. RUSS HERMAN:

Johnston, Levy, LeVan, Bonhomme, Kinser.

MR. STEPHEN HERMAN:

Levy, I don't think we need a hearing for. Your Honor has already ruled.

THE COURT:

I'll let you all consult and we'll talk about that before we recess for the day. But I just got this letter, and I've just asked Mr. Gianna to let me know whether his office can accommodate it. And we'll talk about that before we leave for the day.

Anything else?

MR. RUSS HERMAN:

No, Your Honor.

THE COURT:

Okay.

(Whereupon a brief recess was taken at this time from 3:00 o'clock p.m. to 3:10 o'clock p.m.)

(Whereupon the jury joins the proceedings at this time.)

THE LAW CLERK:

All rise. Recess is over. Court will come to order.

THE COURT:

Please be seated

EXAMINATION BY MR. SHOLES:

Q. Professor Norrell, at the break, we were talking about the warnings on the cigarette packages.

Now, the question, I believe, is as a result or shortly after the '64 Surgeon General's report, were warnings placed on cigarette packages?

A. Yes. In 1965, the Congress passed a law putting warnings on. And it went into effect in 1966.

Q. And did you bring a copy or a demonstrative of that first warning?

A. I did, yes.

MR. SHOLES:

At this time, Your Honor, we'd now like to move to prescreen DDA-1017.

MR. MURRAY:

No objection.

MR. SHOLES:

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Move to publish.
THE COURT:
You may publish it.
EXAMINATION BY MR. SHOLES:
Q. Professor, I know that we can all see it. But would you be kind enough to read it for us?
A. The warning read "Caution: Cigarette Smoking May Be Hazardous To Your Health."
Q. Has this warning been on every package of cigarettes since 1966?
A. Well, this was on every package of cigarettes for a number of years. In 1971, the warning message was changed and it was changed again in the 1980s.
Q. Now, I notice that this one says "May Be Hazardous To Your Health." What's the significance of the word "May"?
A. Well, that's accurate. I mean, that's an accurate statement, at least as the public health community understood it in 1965 when the law was passed. You know, cigarette smoking does not damage everybody's health, they determined, but it is a risk for everyone who smokes.
Q. Now, you told us that the Surgeon General's report in '64 got major notoriety, publication and stuff. But what about the warnings itself? Do we know whether or not people actually paid attention or saw the warning?
A. Yes. It was on every package, so every smoker saw it every time or -- he or she picked up the package. And in order to test to make sure that, in fact, people were seeing it, there were polls taken.

Q. And in your research, did you come across some of the polls that were taken on the issue to determine whether or not people saw the warning?
A. Yes.
Q. Did you bring a demonstrative that shows -- that addresses that issue for us?
A. I did.
MR. SHOLES:
Move to prescreen DDA-1078.
MR. MURRAY:
No objection.
MR. SHOLES:
Request permission to publish, Your Honor.
THE COURT:
You may publish.
EXAMINATION BY MR. SHOLES:
Q. Professor Norrell, what are we looking at here?
A. This is just a poll question, a poll done by the United States Department of Health, Education and Welfare. I used some HE&W polls earlier. This one asked: "Have you seen or heard about the health warning label that is required on the outside of each package of cigarettes?"

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And the poll discovered that almost 92 percent of men smokers, 94 percent of women smokers had seen the warning. That's about as close to everybody as you're going to get in a poll. Among the non or among the total population, of course, which includes nonsmokers, 84 percent of men had seen or heard of the warning, 75 percent of women

had seen or heard of the warning.
Q. This is a government poll?
A. Yes, it is.
Q. And what I'm looking at this and what you tell me, it seems as if people who didn't smoke, a few of them might not have heard, but a lot more of the people who did smoke saw the warning; is that right?
A. Yes. I interpret this poll to mean that just about everybody who smoked acknowledged that they had seen it. And a very high proportion of those who didn't smoke, if you averaged the men and women together, that's four out of five nonsmokers had seen it, too. So it was a big event, really. And it registered with the public. Nearly everybody saw it and acknowledged seeing it.
Q. And the warnings changed over time; didn't they?
A. They did.
Q. Did you bring a demonstrative that shows the other warnings?
A. I did.
MR. SHOLES:
Your Honor, at this time we'd move to prescreen DDA-1066.
MR. MURRAY:
No objection.
MR. SHOLES:
May we publish, please?
THE COURT:
You may publish.
EXAMINATION BY MR. SHOLES:

Q. Professor, are these the warnings that have appeared on the cigarette packages and the changes that were done?
A. They have.
Q. Help us understand what we're seeing.
A. Okay. The one on the top, the 1971, this is what replaced the earlier one. This one, you know, says "The Surgeon General Has Determined That Cigarette Smoking Is Dangerous To Your Health." So this is a more -- this is a stronger statement that went on every package in '71. There's no "May." It is. It's a more emphatic, definite statement that it's dangerous to your health.
Then in 1984, the act was changed to create a rotating series of warnings so that the warning changed as smokers bought more packages of cigarettes. And it also became more specific in the rotation about particular diseases.

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Q. You said the act was changed. What do you mean?
A. Well, the law -- the warning was the result of congressional action, laws passed by the Congress that made the tobacco industry put these warnings on the packages. It was mandated by the government.
Q. Do you know who chose what the warnings would say?
A. Well, you know, they're written in the Congress. You know, they're proposed and written in the Congress. But, you know, in the larger background of having the congressional action, it's clear that the public health community is saying we need to rotate the messages so that smokers don't

get too comfortable with any one message and start ignoring it, although clearly they weren't from the poll information.

But, also, the public health community believed that smokers needed to be reminded of the very specific risks that come with it. So, you see, the one on the left there talks about lung cancer and specifics -- and the earlier warnings hadn't done that -- heart disease, emphysema, and that it would complicate pregnancy.

Then there's another one that is focused specifically on fetal injury, babies and smoking among women who are pregnant.

Another one, the one on the bottom left, encourages people to quit smoking. Quitting smoking is good for you is the warning there. Even though it comes on a cigarette pack.

And then, finally, "Cigarette Smoke Contains Carbon Monoxide." And people understand that carbon monoxide is bad for them. It's the smoke, in other words, it's a way of saying the smoke is bad for you.

Q. Now, Professor, you are not an expert in warnings; are you?
A. No.
Q. And you don't know whether or not this would be adequate to tell anybody what they ought to understand or take away from it; do you?
A. No. I have studied that, of course, these warnings are important in terms of reflecting both what the public health community thought and the ways that congressional action went about reminding

smokers of the risks associated with that activity.
Q. And based upon your historical research, is it your opinion that people are aware, smokers are aware of these warnings?
A. Yes.

MR. SHOLES:
Thank you. We can take that one down.

EXAMINATION BY MR. SHOLES:
Q. Doctor, you have told us about the American Cancer Society. Did the American Cancer Society have a branch in New Orleans?

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A. It did. It had the -- New Orleans had the Cancer Association of Greater New Orleans, commonly known by the acronym CAGNO. And it was a very active local branch of the American Cancer Society.
Q. Well, did CAGNO, that branch of the American Cancer Society, participate in activities to provide information to people in Louisiana about the hazards of smoking?
A. It did, yes.
Q. Have you created a demonstrative that outlines some of their activities?
A. I did.

MR. SHOLES:
May we prescreen, Your Honor, DDA-1049?
MR. MURRAY:
No objection.
MR. SHOLES:
Move to publish.
THE COURT:
You may publish it.

EXAMINATION BY MR. SHOLES:

Q. Dr. Norrell, tell us about this.
A. Okay. This is just a list, a summary of the activities of CAGNO. And I think it's interesting that you see how these activities address all ages of the population in this New Orleans area.
You see activities there that are designed for children, a poster contest and coloring books, coloring books that are created to encourage awareness of the health risks. You see very specific things designed for older people, for smokers in particular, there are smoking withdrawal clinics.
Activities designed for the Spanish-speaking community, that is, antismoking pamphlets in the Spanish language. Visual things like posters, things that are meant to be put up and sort of everyday visual reminders of the risks of smoking.
And this is just a portion of all the things that they did. It was really a remarkable effort here, really more extensive than I've seen in any other place of local activities. Continuous, frequent, very carefully covered, that is, the activities of CAGNO appears often in the New Orleans newspapers.
Q. It sounds from the tenor of your comments that, in your opinion, CAGNO's efforts were impressive in getting the word out about the risks of smoking?
A. Yes, I think it is.
You know, in my mind, it's probably connected at some point with Dr. Ochsner. I mean, you put those two things together. A very active and

well-financed and determined local American Cancer Society branch and this remarkable public figure in Dr. Ochsner. And the newspaper, it's clear that the newspaper, the local media, you know, followed

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those, both those -- both the CAGNO and Dr. Ochsner very carefully, wrote about it all the time.

So, you know, in New Orleans in particular, you just get an unending flow of information about what one can do about the health risks associated with smoking.

Q. Was CAGNO in any way associated with something called the Great American Smoke-Out?

A. Well, the Smoke-Out -- Yes, it was. The Smoke-Out, of course, was begun by the American Cancer Society in the late seventies. And, of course, it's continued ever since.

A certain day in November is set aside as the national -- as the Great American Smoke-Out, a day when everybody who smokes is encouraged to stop smoking, stop smoking for that day, and then try to keep smoking -- keep from smoking in the subsequent period of time as you move into Thanksgiving and Christmas.

It's supported or promoted by the American Cancer Society all over the country, gets lots of publicity everywhere and, of course, in particular, it was followed here in Louisiana.

Q. Did it get publicity here in Louisiana?

A. It did.

Q. Did you bring a demonstrative that might help us identify some of that?

A. I did.

MR. SHOLES:
Move to prescreen DDA-1047.
Request to publish it.
THE COURT:
Any objection?
MR. MURRAY:
No objection.
THE COURT:
You may publish.

EXAMINATION BY MR. SHOLES:

Q. Professor, what is this?

A. Well, this is just a summary of headlines in The Times-Picayune that shows you that the Smoke-Out occurred, was promoted heavily here in New Orleans, and that it occurred year after year and continues up to this day.

This is a day when every smoker in New Orleans, Louisiana or around the country was reminded that you can quit, that there's going to be support for you if you attempt to quit, and that -- and everybody's reminded that, you know, about as many people in this country have quit smoking as do smoke still.

Q. Now, Professor, is this every article that covered the Great American Smoke-Out that appeared in Louisiana newspapers?

A. No, this is just a small sample to show, you know, that it was something that was done every year.

Q. Now, earlier you mentioned Ann Landers and Dear Abby. What was their significance in this?

A. Well, Ann Landers and Dear Abby, you know,

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are advice columnists in newspapers, including the Louisiana newspapers. And Ann Landers and Dear Abby always reminded their readers about the Smoke-Out. Both Ann Landers and Dear Abby, of course, who were sisters, were very ferocious antismoking advocates.

And they constantly, in their advice columns, told people to -- that they ought to quit, that it was terrible for their health, and they never let up on this. And they always reminded their readers in November about the Smoke-Out. Here's the time to do something about what we say you need to do, anyway.

Q. Did you provide a demonstrative with some examples of the kind of things that were in those columns?

A. Yes, I did.

MR. SHOLES:

Move to prescreen DDA-1084. Move to publish.

THE COURT:

Any objection?

MR. MURRAY:

No objection.

THE COURT:

You may publish it.

EXAMINATION BY MR. SHOLES:

Q. Professor, what are we looking at?

A. These are just two examples. And, I mean, there are so many of them. But these are just two. And they're typical of the kind of things that Abby and Ann Landers said about it. Dear Abby in The Times-Picayune in '83 said, "Millions of smokers have already kicked the habit. If you smoke, quit.

If you don't smoke, don't start." And so forth.

And Ann Landers had much the same message. These are -- These are -- The antismoking message in Dear Abby and Ann Landers were frequent, they appeared on, you know, part of the pages -- part of the newspapers that were not the main news pages. They reinforced what readers often saw on the front page of the newspaper. They never came with any other point of view because Ann Landers only allowed her point of view, which was, you know, it's bad for you, it will kill you, quit.

Q. Would it be accurate to say that these advice columns, that they in a significant way played a part in getting advice to the public about smoking?

A. Yes. Very significant.

Q. Now, were Dear Abby and Ann Landers the only advice columns giving people advice in Louisiana?

A. No. Most newspapers in Louisiana carried what were called Dear Doctor columns. Dear Doctor, there would be a columnist in the newspaper who gave advice on health matters. And there were all kinds of health matters discussed. People would write in and the columnist would take an issue and give the advice of a physician about it.

And they were very widely read, not just in

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Louisiana but all over the country. And they are significant, too, because they always advocated quitting smoking. They always talked about the, in specific terms, about the particular diseases that you got from smoking.

Q. Did you bring us some examples of those kinds of columns?

A. Yes.

MR. SHOLES:
I move to prescreen DDA-1083.
MR. MURRAY:
No objection.
MR. SHOLES:
Move to publish.
THE COURT:
You may publish.

EXAMINATION BY MR. SHOLES:

Q. Doctor, are these some of the -- some types of the advice, Dear Doctor columns?

A. Yes. These are just three examples of a mountain of them, to tell you the truth. They appear regularly, you know, maybe not every day but every few days in each newspaper. And they offered advice, they explained what the health risks were in terms that everybody could understand and they gave advice about how to quit.

Again, it's like Ann Landers, there's only one point of view presented in this and that's that cigarettes are bad for you.

MR. SHOLES:
We can take that one down.

EXAMINATION BY MR. SHOLES:

Q. Now that it's down, Professor, were there advice columns, Dear Doctor advice columns, in other papers around the State of Louisiana?

A. Yes. Certainly in all the ones that I saw, all of the newspapers. And I looked at a lot of different newspapers. Certainly, Baton Rouge and Shreveport and Lafayette.

Q. Well, television is a major medium in this country. Many of us -- Am I correct about that?

A. Oh, absolutely, yes.

Q. Is it correct to say that many of us in Louisiana watch television programs?

A. Many of us in Tennessee do. I guess many of y'all in Louisiana do, too. I assume that's true.

Q. A significant source of entertainment?

A. Throughout this country, it's the main -- it's the most popular form of entertainment.

Q. Professor, did antismoking comments appear frequently in television programs?

A. Yes. Lots of, you know, reporting on television news -- I've already talked about that -- it becomes more frequent through the 1960s and through the 1970s.

The interesting thing about television is you begin to see a lot of antismoking messages coming

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through in popular television programs -- I'm sorry, entertainment television programs like the 30-minute situation comedy.

In the 1970s, you start to see a lot of programs who take up the antismoking message as the theme of programs that are designed to entertain us. And they do entertain us, but they pick up the antismoking message. And like the movies I showed you earlier with all the antismoking slang, some of that is there. But with this you start to see television shows that really are focused on the ills of smoking.

Q. We're about to watch some television programs; aren't we?

A. Just a very small portion of a great many of them that did this.

MR. SHOLES:

Your Honor, at this time we'd move to screen DDA-1074.

MR. MURRAY:

No objection.

THE COURT:

You may publish it.

(Whereupon the above-referenced videotape is played back at this time as follows:)

Happy Days, Smoking Ain't Cool, originally aired 01-15-79:

UNIDENTIFIED GIRL: Here, Joanie. Have another.

JOANIE: Oh, no. I just ditched one. I'm trying to cut down.

UNIDENTIFIED GIRL: Well, we're all having one. What? You're afraid somebody might see you?

JOANIE: No. Okay.

UNIDENTIFIED GIRL: Take one of mine. You're a Magnet now.

JOANIE: Hmmm, smooth.

RICHIE: Are you smoking?

JOANIE: No.

RICHIE: Right. Very funny.

* * * * *

RICHIE: Oh, Joanie, you're smoking at home. That's terrible. You're going to become a chain smoker. Oh, will you

look at that? Yep, this is it. You're hooked. Well, maybe nothing now but wait till it starts getting really bad and you're groping around in the gutter just hoping to find a butt.

* * * * *

MR. CUNNINGHAM: Now, look, Joanie, just tell me why. Does it make you feel important or glamorous? Do you think it's glamorous to go around with yellow fingers?

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MRS. CUNNINGHAM: I won't say this, but smoking leads to heart attacks.
RICHIE: And lung disease.
MR. CUNNINGHAM: Joanie, --
MRS. CUNNINGHAM: I won't say anything about some people thinking that smoking might lead to cancer.
RICHIE: And all that tar and garbage gets into your system and turns your lungs black.
MR. CUNNINGHAM: Will you two stop it?
RICHIE: Joanie, --
MRS. CUNNINGHAM: Howard, just tell her that kissing someone who smokes is like kissing an ashtray.
* * * * *
RICHIE: Fonz, this is about Joanie.
FONZIE: Hey, shortcake, how is the apple of my eye?
RICHIE: Your apple is smoking.

FONZIE: Joanie is smoking cigarettes?
MR. CUNNINGHAM: I'm afraid so.
* * * * *
FONZIE: Are you nuts on smoking? Let me put it another way. Smoking ain't cool. Let me plant two things in your brain: You're my favorite shortcake. And, number two, if you don't stop smoking, your body is going to dump you. And I'm crazy about it.
* * * * *
UNIDENTIFIED GIRL: Here, Joanie, light up. I'll teach you how to do the French inhale.
JOANIE: No, I don't smoke.
UNIDENTIFIED GIRL: Why not? You chicken?
JOANIE: No, I'm not chicken. I just don't want it.
UNIDENTIFIED GIRL: Well, come on, Joanie, I mean, not too cool.
JOANIE: Oh, well, I've been thinking about cool. And I decided everyone should decide what's best for themselves. And I don't think smoking is cool.
So what do you say, Angela? Who do you want in the Magnets? Me or my lungs?
UNIDENTIFIED GIRL: Take it easy, Joanie, we want you.

JOANIE: Okay. No cigarettes.
UNIDENTIFIED GIRL: Boy, you got guts. Wish I had. Maybe then I wouldn't be up to two packs a day.

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Sanford and Son, A Matter of Life and Breath, February 11, 1972.

FRED SANFORD: Smoking less but enjoying it more.

* * * * *

Sanford and Son, A Matter of Life and Breath, February 11, 1972.

LAMONT: Now, you got to give them up. You got to give up cigarettes.

FRED SANFORD:

For what?

LAMONT:

Because they're killing you, that's for what.

* * * * *

Sanford and Son, A matter of Life and Breath, February 11, 1972:

LAMONT: Hey, Pop, do yourself a favor. Give them up.

FRED SANFORD:

Give them up? I enjoy smoking.

LAMONT:

Say, Pop, cigarettes will kill you. Don't you believe me?

* * * * *

Learning Values With Fat Albert and the Cosby Kids Starring Bill Cosby,

Smoke Gets in Your Hair.

FAT ALBERT: Fee fie foe fum, I smell the smoke of a puffing one. Hold it, Wombly. I got a couple questions to ask you.

WOMBLY: Careful, man, you'll bend my threads.

FAT ALBERT: Wombly, you've been smoking in here.

WOMBLY: Okay. So what? I can smoke anywhere I want.

MOM: Poor Wombly, you just can't seem to shake that cold.

WOMBLY: Yeah, I can't understand how come I get so many colds.

* * * * *

MR. COSBY: I can understand. Do you know that kids Wombly's age who smoke get three times as many colds and other respiratory problems? And if you smoke this many a day, see, then you'll get ten times as much trouble with your lungs and throat as kids who don't smoke.

Now, what Wombly's dad doesn't realize is that most boys who smoke are really imitating their fathers. Most girls who smoke are really imitating their mothers. It's all here, right in the U.S. Surgeon General's report.

* * * * *

DAD: Well, anyway, I just don't

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want him to get in the habit of smoking.
MOM: Oh, you mean like you?
DAD: Me? I don't have a habit.
MOM: You don't?
DAD: Of course not. Why, I quit smoking hundreds of times.
WOMBLY: Dad, dad. Oh, my gosh. What will we do?
FAT ALBERT: Hey, hey, hey, I better call emergency.
DAD: Oh, I'll be all right, provided I do one thing. And that's it. That's it for me. No more smoking.
(Whereupon the playback of the above-referenced videotape is concluded at this time.)
MR. SHOLES:
Can we have the lights back, please?

EXAMINATION BY MR. SHOLES:

Q. Professor Norrell, the last one was Fat Albert and the Cosby Kids; am I correct?
A. Yes.
Q. Was that something that was watched by a large portion of the children in America?
A. Yes, I believe so. A very popular cartoon.
Q. Now, Doctor, you told us a lot about Dr. Ochsner during this day. During the rest of his lengthy career, did Dr. Ochsner in his career try to educate people about the risks of smoking and did he ever focus on helping people quit smoking?
A. Well, Dr. Ochsner continued up to when he died in the early eighties on his mission of

educating people about the health risks. And he had always told people that, you know, they needed to quit; if they were smokers, they needed to quit. And that was the only really sensible thing to do.
After, after everybody had really accepted the connection between lung cancer and smoking, he became more focused on -- with his time on actually teaching stop-smoking clinics and cessation efforts and promoting those. And so he clearly, you know, was widely involved in those here especially in New Orleans.
Q. Were there stop-smoking programs in his hospitals?
A. Yes.
Q. But were those the only stop-smoking programs in Louisiana?
A. No. Stop-smoking programs have been around for a long time. Some of them were, you know, offered for profit. But many -- more and more, they were offered at no cost. Often, you know, by the American Cancer Society.
Q. Did you bring us a demonstrative that gives some of the examples of the kinds of smoking cessation programs that were available in Louisiana?
A. Yes.

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MR. SHOLES:
At this time, Your Honor, we would like to prescreen DDA-1053.
MR. MURRAY:
No objection.
MR. SHOLES:
Move to publish.

THE COURT:
You may publish it.

EXAMINATION BY MR. SHOLES:

Q. Professor, what are we looking at?

A. Okay. These are just some advertisements for stop-smoking clinics. Some of them sponsored by, it appears to me, by private groups; but, also, many of them by the ACS. These appeared all the time in the 1980s, but there have been stop-smoking programs advertised or just announced in the news pages in the New Orleans and Louisiana papers much earlier. These are just from a very specific period of time in the 1980s.

Q. Now, these appear to all be in The Times-Picayune in New Orleans.

A. Yes.

Q. Were they available in other portions of the state?

A. Yes, this kind of opportunity for clinics on smoking were really available everywhere.

Q. What, in your opinion, is the significance of this type of information on the awareness of the people in Louisiana?

A. Well, every stop-smoking ad or every ad or announcement for a stop-smoking clinic is a reminder that every smoker can quit or every smoker has to make up his mind every day whether he's going to smoke or not because there's something that you can do to address that in terms of attending a stop-smoking clinic. And these ads are constant reminders of that and they appeared, you know, regularly, even daily, in Louisiana newspapers.

Q. Professor Norrell, based upon your review of all of the information available over the last three or four decades, were the people in Louisiana aware of the risks associated with cigarette smoking?

A. Yes, sir, they were. They were well-advised that cigarettes were dangerous, that cigarettes caused particular diseases, that cigarettes -- and those diseases were so serious that cigarettes could kill you, and that cigarettes were a habit hard to quit. People in Louisiana have been advised of -- have been advised of that for a very long time now.

Q. And, Professor, does the fact that someone else may have been telling you to smoke in any way take away from the fact that people in Louisiana were aware that smoking was risky and could be hard to quit?

A. In my research, the historical records suggest, no, that it did not take away from that

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message, that awareness, that had been developed.
MR. SHOLES:
Your Honor, we tender the witness.
THE COURT:
Approach the bench, Counsel.
(Whereupon a bench conference is held at this time as follows:)
THE COURT:
I don't think there's any point in starting your cross for fifteen minutes.
MR. MURRAY:
I would prefer not to.
THE COURT:
Okay. We'll start the cross in the

morning, so we'll recess at this point.
MR. WITTMANN:
Thank you.
(Whereupon the bench conference is concluded at this time.)
THE COURT:
Ladies and gentlemen, we're going to start the cross-examination of this witness in the morning, so we're going to recess at this point for the day. Tomorrow morning, 9:30. See you then. Thank you.
(Whereupon the jury is excused at this time.)
THE COURT:
Let the record reflect the jury has left the courtroom.
Anything for the record by plaintiffs' counsel?
MR. RUSS HERMAN:
Yes, Your Honor.
I want to correct the record or at least advise The Court and opposing counsel. Yesterday I reserved the right as to two exhibits, which learned counsel said had not been posted on the exhibit list even though they were on the cross list. I checked that. He was correct. For some reason, that list was not filed timely.
And I want to correct the record on that and advise The Court that counsel was right about those two exhibits. They haven't been admitted. They're now on an exhibit list and

we will use them with other witnesses at some point.
THE COURT:
Anything else by plaintiffs' counsel?
Defendants, anything for the record?
MR. WITTMANN:
No, Your Honor.
MR. LONG:
One thing, Your Honor.
THE COURT:
Yes, Mr. Long.

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MR. LONG:

In fairness to Professor Viscusi, I'd like to complete the record. What we've heard today at the breaks and whatever, we're reading a transcript from yesterday. Everybody agrees on how it reads. Different people give that sentence different volumes and different inflections.

We all sat here yesterday when those words came from the witness' mouth. There was an opportunity for the plaintiffs, if they had any doubt, if they thought there was any ambiguity in what the professor said, there was certainly an opportunity to at least request recross.

The defendants did that several times; sometimes it was granted, sometimes it was not. But, instead, the plaintiffs made not a peep about recross but come in arguing the cold record a day later, accusing the witness of perjury. And I'd suggest that what was

actually heard from that stand, if it had caused a problem, there should have been a request to recross.

MR. RUSS HERMAN:

Your Honor, I have a brief reply.

The reason I didn't request redirect was I wanted, number one, an accurate transcript. But, even more importantly, once I make a stipulation, I don't violate it. And I could not have crossed because of the stipulation.

THE COURT:

We will recess until --

MR. WITTMANN:

Your Honor, may I respond to that?

THE COURT:

No. This could go on for a week. And there's got to be an end to it.

MR. WITTMANN:

He raised it, Your Honor. I didn't.

THE COURT:

And it ends now.

We'll recess until 9:30 tomorrow morning.

(Whereupon the proceedings were adjourned at 3:50 o'clock p.m.)

* * * * *

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CHERYL FOURNET HUFFMAN, RMR, CRR
Registered Merit Reporter
Certified Realtime Reporter
(No. 75009)
Huffman & Robinson, Inc.
One Shell Square, Suite 250 Annex
701 Poydras Street
New Orleans, Louisiana 70139
(504) 525-1753 (800) 749-1753

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